



**The Use of Prone Restraint in Minnesota Schools:  
August 2011 through January 2012**

**February 2012**

**FY 2012  
Report  
To the  
Legislature**

**As required by  
Minnesota Statutes  
2012**

**2011 Minnesota Laws 1 Special Session, Article 3, Section 2**

**COMMISSIONER:**  
**Brenda Cassellius**

**The Use of Prone  
Restraint in  
Minnesota  
Schools:**

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**February 1, 2012**

**FY 2012  
Report  
To the  
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**As required by  
Minnesota Statutes**

**2011 Minnesota Laws  
1 Special Session,  
Article 3, Section 2**

Upon request, this report can be made available in alternative formats.

**Cost of Report Preparation**

The total cost for the Minnesota Department of Education (MDE) to prepare this report was approximately \$13,390.92. Most of these costs involved staff time in analyzing data from surveys and preparing the written report. Incidental costs include paper, copying, and other office supplies.

Estimated costs are provided in accordance with Minnesota Statutes 2011, Section 3.197, which requires that at the beginning of a report to the legislature, the cost of preparing the report must be provided.

## INTRODUCTION

The use of prone restraint in Minnesota schools has sparked considerable political debate in the last several years. Pointing to an unidentified situation where a staff person was assaulted by an out-of-control student with special needs, some argue that prone restraint is a necessary tool for preventing harm and ensuring the physical safety of staff and students. Based on anecdotal evidence of death caused by the use of prone restraint in other jurisdictions, others argue that it is only a matter of time before a Minnesota child is seriously injured or killed while in prone restraint, and so conclude that its use should be banned. Within this context of diametrically opposed beliefs and opinions, and for the sole purpose of providing Minnesota's policy-makers with an evidence-based body of information relevant to the continuing discussions on the topic, the Minnesota Department of Education has compiled the following data related to the current use of prone restraint in Minnesota's schools as required by 2011 Minnesota Laws 1 Special Session, Article 3, Section 2.

## DEFINITIONS

Generally, the term “**restraint**” is used to mean the **use of force to limit another person's movement**, whether by physical contact (physical restraint), with mechanical devices (mechanical restraint), or chemically by the use of drugs (chemical restraint).<sup>1</sup> These types of restraint are commonly referred to as “**restrictive procedures**.”

In most states' laws, restrictive procedures can only be used in an emergency. In Minnesota, an emergency is defined as “a situation where immediate intervention is needed to protect a child or other individual from physical injury or to prevent serious property damage.”<sup>2</sup>

The category of **physical restraint**, termed “**physical holding**” in relevant Minnesota law,<sup>3</sup> generally includes several different types of physical holds. Below are generic illustrations of common types of physical holds.

- **Basket Hold:** An adult holds a child from behind by the wrists with the child's arms crossed in front of the child; this can be done sitting, standing or lying down.



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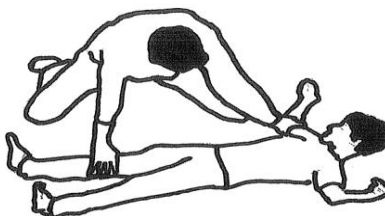
<sup>1</sup> Ferleger, D. (2008). Human services restraint: its past and future. *Intellectual and Developmental Disabilities*, 46( 2), 155.

<sup>2</sup> Minn. Stat. § 125A.0941, Subd. (b) (2011).

<sup>3</sup> Minn. Stat. § 125A.0941, Subd. (c) (2011).

<sup>4</sup> Seibert, C.F. (2012). Restraint-related fatalities in mental health facilities: Report of two cases. Retrieved from <http://charlydmiller.com/LIB02/2000ramhf.html>.

- **Supine Hold:** The child's arms and legs are held by at least two adults while child lies on his/her back.



- **Prone Hold:** The child's arms and legs are held by at least two adults while child lies on his/her front in a face-down or face-to-the-side position.



## **REGULATORY HISTORY OF RESTRAINT IN MINNESOTA**

The legality, morality and efficacy of using seclusion<sup>5</sup> or restraint on individuals with disabilities have been debated in the United States for decades.<sup>6</sup> School districts have both practical and legal responsibilities to ensure a safe working and learning environment for their staff and all students, and these responsibilities provide a legitimate basis of support for the use of restraint in appropriate circumstances. At the same time, concerns exist that these procedures are subject to misapplication and abuse, placing students at equal or greater risk than their problem behavior(s) pose to themselves or others. These documented<sup>7</sup> concerns include the following:

- Restraint procedures are inappropriately implemented as “treatments” or “behavioral interventions” rather than as safety procedures;

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<sup>5</sup> Minnesota’s restrictive procedures statute defines seclusion as “confining a child alone in a room from which egress is barred. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.” Minn. Stat. § 125A.094(f) (2011).

<sup>6</sup> Ferleger, D. (2008). Human services restraint: its past and future. *Intellectual and Developmental Disabilities*, 46(2), 155.

<sup>7</sup> Horner, R., and Sugai, G. (2009, April 29). Considerations for seclusion and restraint use in school-wide positive behavior supports. Retrieved from <http://www.pbis.org/seclusion/restraint/default.aspx>.

- Restraint is inappropriately used as punishment for noncompliance rather than for safety or harm prevention;
- The use of restraints causes more physical harm to the student and staff involved than does the initiating problem behavior;
- Inadequate training in the appropriate use of restraint increases the risk of harm to all involved;
- Use of restraint inadvertently reinforces the triggering behavior; and
- Restraint is implemented independent of comprehensive, function-based behavioral intervention plans, which is contraindicated as an effective teaching strategy.

### **Regulation of Restraint in DHS Facilities**

Within state government, historically the Minnesota Department of Human Services (DHS) had responsibility for children with disabilities, the majority of whom were not allowed in the nation's public schools.<sup>8</sup> Rules governing the use of restrictive procedures in facilities licensed by DHS, commonly referred to as "Rule 40" and first authorized by the legislature in 1982, were initially promulgated in June 1987 as published at Minnesota Rules 9525.2700-9525.2810.<sup>9</sup> Though they have been refined over time,<sup>10</sup> these authorities have been relatively settled and enforced for over 20 years. As a result DHS has had a much longer history of addressing the use of restraints than has the state's education system.<sup>11</sup>

Rule 40 is lengthier and more detailed than the statutes governing the use of restrictive procedures in the education system, in part because Rule 40 addresses the use of what is termed "controlled procedures" in situations that do not constitute an emergency.<sup>12</sup> Rule 40 differs most significantly from the comparable education statutes in the following ways:

- Providing a more comprehensive description of actions and procedures that are exempt from the restrictions of the rule<sup>13</sup>;
- Providing a more comprehensive list of "permitted but controlled procedures" such as mechanical restraint;<sup>14</sup> and

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<sup>8</sup> Granquist, L. (2011, March 11). Educable children. Retrieved from <http://www.accesspress.org/2011/03/educable-children>.

<sup>9</sup> 11 Minn. Reg. 1355; 11 Minn. Reg. 2408.

<sup>10</sup> 17 Minn. Reg. 2085; 18 Minn. Reg. 1141.

<sup>11</sup> Feder, N. L. Congressional Research Service. (2009). The use of seclusion and restraint in public schools: The legal issues (7-5700), 8.

<sup>12</sup> Minn. R. 9525.2750.

<sup>13</sup> Minn. R. 9525.2720.

- Providing that even when “controlled procedures” are part of an individual’s service plan “[t]he person’s primary care physician must be consulted to determine whether implementing the procedure is medically contraindicated.<sup>15</sup> The doctor’s report must be completed 90 days before the initial development of a plan that includes a controlled procedure.<sup>16</sup>

In 2011, DHS entered into a settlement agreement enforced by the federal court in Minnesota regarding the inappropriate use of aversive and deprivation procedures, including the improper use of seclusion and restraint techniques. The settlement arose from a class action lawsuit involving residents’ claims of abuse suffered at Minnesota Extended Treatment Options (METO), a former<sup>17</sup> DHS-licensed facility for developmentally disabled adults located in Cambridge, Minnesota. Pursuant to the settlement in the METO case (METO Settlement), the programmatic use of prone restraint, among many other types of restraint, are not allowed in similar DHS-licensed facilities serving residents with developmental disabilities for the purpose of changing behavior through punishment. This prohibition is based, in relevant part, on the recognition that “asphyxiation is a risk factor” for the use of prone restraint.<sup>18</sup>

As part of the METO Settlement, DHS is currently undertaking a rulemaking process to amend Minnesota Rules, Parts 9525.2700 to 9525.2810, to reflect best practices regarding the use of aversive and deprivation procedures in facilities that serve persons with developmental disabilities, including through the use of positive behavioral approaches and the elimination of particular restraint practices. DHS commenced the formal process by publishing a Request for Comments Notice in the State Register on January 30, 2012.<sup>19</sup> It has established an advisory committee, which includes representation from MDE, and expects the process to result in the formal adoption of amended rules within approximately 12 to 18 months.

### **Regulation of Restraint in Minnesota Schools**

As deinstitutionalization moved people with disabilities into their communities in the 1970s, the controversy over the use of restraints shifted from DHS-licensed institutions to community based settings and eventually to schools. In 1975, Congress passed the Education for All Handicapped Children Act, renamed the Individuals with Disabilities Education Act (IDEA) in 1990, which mandates that all children be provided the right to a “free appropriate public

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<sup>14</sup> Minn. R. 9525.2740.

<sup>15</sup> Minn. R. 9525.2750, H.1.

<sup>16</sup> Minn. R. 9525.2760,1.B.

<sup>17</sup> METO closed on June 30, 2011 and has been replaced at the same location by the Minnesota Specialty Health System – Cambridge, a new DHS-licensed facility.

<sup>18</sup> METO Settlement, Case 0:09-cv-01775-DWF-FLN, Doc. 104-1, Attachment A, p. 5 (2011).

Retrieved at <http://www.johnson->

[condon.com/documents/SettlementAgreementAttachmentA.pdf](http://condon.com/documents/SettlementAgreementAttachmentA.pdf).

<sup>19</sup> 36 Minn. Reg. 878.

education,”<sup>20</sup> and requires that children with disabilities be educated in the “least restrictive environment.”<sup>21</sup> Under IDEA, students eligible for special education began being mainstreamed into general education classrooms in typical school environments. A small fraction of those students brought with them challenging behavioral problems which were disruptive and, at times, dangerous to themselves and/or others. Accordingly, schools began to implement various forms of physical restraint as a “disciplinary management practice”<sup>22</sup> and to ensure staff and student safety.

In 1993, the Minnesota Department of Education (MDE) promulgated its first rule regulating the use of restrictive procedures for children with disabilities.<sup>23</sup> Known as the “behavior intervention rule,” the MDE rule was closely modeled on DHS’s Rule 40.

The MDE rule proved controversial from the outset. As part of a legislatively mandated task force charged with reviewing many of the state’s special education rules, the rule was first revised in 1995<sup>24</sup> in several relevant respects: (1) language was added to encourage the use of positive approaches to behavioral interventions; (2) definitions were included; and (3) regulated interventions were categorized as either prohibited procedures, which were disallowed, or conditional procedures, which could only be used if included in a special education child’s Individual Education Plan (IEP) or in an emergency situation.<sup>25</sup> At the time, prone restraint was not specifically prohibited in the Rule so it was considered a conditional procedure.

## RECENT REGULATORY DEVELOPMENTS

### Federal Developments

In 1998, the *Hartford Courant* published an investigative report<sup>26</sup> on the nationwide extent of restraint and seclusion, identifying at least 142 deaths due to the use of seclusion and restraint in psychiatric hospitals and other licensed facilities over a decade. That same year, a commissioned report from the Harvard Center for Risk Analysis estimated that between 50 to 150 individuals died each year as a result of improper restraint and seclusion, and that children

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<sup>20</sup> 34 C.F.R. § 300.17.

<sup>21</sup> 34 C.F.R. §§ 300.114 - 300.120.

<sup>22</sup> Vital, C., Kajs, L. and Alaniz, R. (2005). Strengthening policies and practices in the use and prevention of physical restraint in schools. C. Hooker (Ed.) West’s Education Law Reporter. Thompson West.

<sup>23</sup> Minn. R. 3525.2925.

<sup>24</sup> Minnesota Rules 3525.2925 was actually repealed in 1995; its content was reenacted as divided between Minnesota Rules 3525.0850 and Minnesota Rules 3525.2900. See 19 Minn. Reg. 2432.

<sup>25</sup> Minn. R. 3525.2900, Subp. 5(A)(1).

<sup>26</sup> Weiss, E.M. (1998, October 11). Deadly restraint: a Hartford Courant investigative report. Retrieved from <http://www.charlydmiller.com/LIB05/1998hartforddata.html>.



were at especially high risk for death and serious injury. These publications led to increased public awareness of the use of restraint and seclusion, which led to Congressional examination of the issue.

In May 2009, the Education and Labor Committee of the United States House of Representatives held hearings that examined the misapplication of seclusion and restraint techniques in schools. At the same time, the United States Government Accountability Office released a report, *“Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers”* (GAO Report),<sup>27</sup> which uncovered allegations of abuse and potentially deadly misapplication of seclusion and restraint techniques in schools. This document confirmed the existence of “no federal regulations related to seclusions and restraints in public and private schools and widely divergent laws at the state level.”<sup>28</sup> At the time, nineteen states<sup>29</sup> had no laws or regulations related to the use of seclusions or restraints in schools<sup>30</sup> while eight states<sup>31</sup> specifically prohibited the use of “prone restraints or restraints that impede a child’s ability to breathe.”<sup>32</sup>

On July 31, 2009, United States Department of Education Secretary Arne Duncan sent a letter (the Duncan Letter) to all Chief State School Officers encouraging each state to review and revise their policies and guidelines regarding the use of restraint and seclusion in schools to better ensure the safety of students. The Duncan Letter<sup>33</sup> and growing public interest in the issue motivated several states to enact legislation or policy guidance pertaining to the topic.<sup>34</sup>

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<sup>27</sup> Kutz, G. Government Accountability Office, Forensic Audits and Special Investigations, (2009). Seclusions and restraints selected cases of death and abuse at public and private schools and treatment centers (GAO-09-719T). Retrieved from <http://www.gao.gov/assets/130/122526.pdf>.

<sup>28</sup> *Id.*, at 3.

<sup>29</sup> Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Jersey, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, Wisconsin and Wyoming.

<sup>30</sup> Kutz, G. Government Accountability Office, Forensic Audits and Special Investigations, (2009). Seclusions and restraints selected cases of death and abuse at public and private schools and treatment centers (GAO-09-719T). Retrieved from website: <http://www.gao.assets/130/122526.pdf>, 4.

<sup>31</sup> Colorado, Connecticut, Iowa, Massachusetts, Pennsylvania, Rhode Island, Tennessee, and Washington.

<sup>32</sup> Kutz, G. Government Accountability Office, Forensic Audits and Special Investigations, (2009). Seclusions and restraints: Selected cases of death and abuse at public and private schools and treatment centers (GAO-09-719T). Retrieved from <http://www.gao.assets/130/122526.pdf>, pp. 4 and 9.

<sup>33</sup> Duncan, A. U.S. Department of Education, (2009). Key policy letters signed by the education secretary or deputy secretary. Retrieved from <http://ed.gov/policy/elsec/guid/secletter/090731.html>.

<sup>34</sup> See Attachment B, which includes a listing of all laws and policy guidance currently in effect

## Minnesota Developments

In 2008, the Minnesota Legislature charged an existing Special Education Task Force with recommending revisions to state rules regulating the use of aversive and deprivation procedures in schools.<sup>35</sup> The Task Force was made up of special education providers, advocates, regulators, lawyers, teachers, school officials, and consumers of special education services, and was convened by the Bureau of Mediation Services. During the 2008 legislative session, the convener filed a Task Force report<sup>36</sup> indicating that the group was unable to make final recommendations to amend the state rules given other ongoing rule processes and a lack of consensus, which was later evidenced by the filing of a non-majority report from a segment of the Task Force.

Between the 2008 and 2009 legislative sessions, the National Alliance on Mental Illness - Minnesota (NAMI) convened a group of stakeholders to continue working to update Minnesota's statutes and rules on seclusion and restraint in schools. With assistance from this group of experts, which included parent representatives, advocacy organizations, and special education professionals, a consensus-based draft of legislative language was eventually submitted for consideration and action.

The 2009 Minnesota Legislature repealed the state's existing behavior intervention rule<sup>37</sup> and replaced it with the consensus-based legislative language, enacted as Minnesota Statutes Sections 125A.094, 125A.0941 and 125A.0942.<sup>38</sup> The statutes, which were made effective on August 1, 2011, revamped the use of seclusion and restraint in public schools and reflected stakeholder compromise and agreement on definitions, a required plan, procedures, conditions, documentation, prohibitions, staff training requirements and the promotion of positive behavior interventions and supports.<sup>39</sup> This legislation specifically prohibited the use of "physical holding that restricts or impairs a child's ability to breathe"<sup>40</sup> but included no definitions specifying whether that limitation barred the use of prone restraint in all instances.

Before the 2009 legislation became effective, a Special Session of the 2011 Minnesota Legislature amended Minnesota Statute, Section 125A.0942 to address the use of prone

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throughout the country.

<sup>35</sup> The Task Force was originally established in 2007 and directed to examine state and federal special education law for the purpose of identifying where state law exceeded federal mandates. See 2007 Minn. Laws, Chapter 146, Article 3, Section 23.

<sup>36</sup> The Task Force report is available at <http://www.docstoc.com/docs/82037224/Mindy-Greiling-house>.

<sup>37</sup> The behavior intervention rule was then numbered Minn. R. 3525.2900, Subpart 5.

<sup>38</sup> 2009 Minn. Laws, Chapter 96, Article 3.

<sup>39</sup> Minn. Stat. §§ 125A.0940 - .0942 (2009).

<sup>40</sup> Minn. Stat. § 125A.0942, Subd. 4(9) (2009).

restraint. The amendment specifically allows the use of prone restraint within schools until August 1, 2012 if all of the following statutorily-defined criteria are met.<sup>41</sup>

1. Prior to using prone restraint, the district must review “any known medical or psychological limitations that contraindicate the use of prone restraints” for a specific child.<sup>42</sup>
2. It can be used only in an emergency, defined as a situation when “immediate intervention is needed to protect a child or other individual from physical injury or to prevent serious property damage.”<sup>43</sup>
3. It is used in a manner that does not restrict or impair a child’s ability to breathe.<sup>44</sup>
4. Prone restraint is only used by personnel with required credentials who have completed required training.<sup>45</sup>
5. The district has provided to MDE a list of staff that has had specific training on the use of prone restraints.<sup>46</sup>
6. It is used only when prone restraint is the least intrusive intervention that effectively responds to the emergency.<sup>47</sup>
7. It ends “when the threat of harm ends and the staff determines that the child can safely return to the classroom or activity.”<sup>48</sup>
8. Staff must directly observe the child while in prone restraint.<sup>49</sup>
9. Staff completes required documentation every time it is used, noting why a restrictive measure failed or was determined by staff to be inappropriate or impractical and the time the prone restraint began and ended.<sup>50</sup>
10. The school makes reasonable efforts to notify the parent on the same day prone restraint is used on the child, or at least sends notice of its use within two days.<sup>51</sup>
11. Each incident of the use of prone restraint is reported to MDE within five working days, on either a MDE or a district’s documentation form.<sup>52</sup>

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<sup>41</sup> Minn. Stat. § 125A.0942, Subd. 3(7) (2011).

<sup>42</sup> Minn. Stat. § 125A.0942, Subd. 3(7)(v) (2011).

<sup>43</sup> Minn. Stat. § 125A.0941(b) (2011).

<sup>44</sup> Minn. Stat. § 125A.0942, Subd. 4(9) (2011).

<sup>45</sup> Minn. Stat. § 125A.0942, Subd. 2(a) (2011).

<sup>46</sup> Minn. Stat. § 125A.0942, Subd. 1 (2011).

<sup>47</sup> Minn. Stat. § 125A.0942, Subd. 3(1) (2011).

<sup>48</sup> Minn. Stat. § 125A.0942, Subd. 3(2) (2011).

<sup>49</sup> Minn. Stat. § 125A.0942, Subd. 3(3) (2011).

<sup>50</sup> Minn. Stat. § 125A.0942, Subd. 3(4) (2011).

<sup>51</sup> Minn. Stat. § 125A.0942, Subd. 2(b) (2011).

<sup>52</sup> Minn. Stat. § 125A.0942, Subd. 3(7)(iv) (2011).

12. If within 30 days a child is subject to a total of two instances of prone restraint or other combination constituting two instances of restrictive procedures, the district must convene the IEP Team to:
- a. “conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate;” and
  - b. “review any known medical or psychological limitations that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.”<sup>53</sup>
13. Schools must maintain and make publicly accessible a restrictive procedures plan that: includes prone restraint; defines a monitoring and review process related to its use which includes post-use debriefings and an oversight committee; and describes and documents required staff training.<sup>54</sup>

The 2011 legislation did not “create” the use of prone restraint in Minnesota. School districts utilized various forms of restrictive procedures, including prone restraint, prior to the 2011 enactment as allowed by earlier forms of the behavior intervention rule. Pursuant to Minnesota Statute Section 125A.0941, Subdivision 3(4), districts are required to maintain documentation regarding their use of all restrictive procedures but were not legally required to report to MDE any data concerning the use of any type of restrictive procedures prior to August 1, 2011. As a result, MDE is unable to quantify how often and in what circumstances prone restraint was utilized by districts prior to that date.

### **MINNESOTA’S PRONE RESTRAINT DATA: A FIVE-MONTH VIEW**

#### **Important Disclaimers**

**Short Reporting Window.** School districts have been statutorily required to report to MDE regarding their use of prone restraint only since August 1, 2011. For purposes of preparing this report, MDE included in the figures below all reports received prior to January 13, 2012. The data represents districts’ experience with prone restraint over a five month period, only four of which fell within the typical school year. It is likely that this limited timeframe for data collection could influence the validity of the reported data trends.

**Not the Whole Picture.** MDE acknowledges that the use of prone restraint is best evaluated within the context of the statewide use of all other types of restrictive procedures by Minnesota school districts. Although districts are required to maintain data on their use of

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<sup>53</sup> Minn. Stat. § 125A.0942, Subd. 2(c) (2011).

<sup>54</sup> Minn. Stat. § 125A.0942, Subd. 1 (2011).

restrictive procedures, including physical holding or seclusion,<sup>55</sup> they are not required to report this data to MDE. As a result, the agency is unable to provide policy-makers with data to substantiate what percentage of the overall incidence of restrictive procedures is reflected in the data specific to prone restraint, or to provide the Legislature with data that reflects the incidence of use of other restrictive procedures in emergency situations.

**Inconsistent Forms.** The statute specifically allows a district to report its use of prone restraint to the state agency via use of an MDE-developed report form or via a district-developed report form. MDE has received several different report templates from districts. Some of the district forms include all the required statutory data points; others do not. This has lead to some disparity in the completeness of information reported.

**Outliers.** One student accounted for 8%, or 23 of the 286 reports; four students accounted for 21%, or 61 of the 286 reports; and ten students accounted for 36%, or 104 of the 286 reports of prone restraint within the reporting timeframe. Including these unique situations in the overall data counts does skew the appearance of the data. However, MDE had no statutory authority to ignore or remove this data from the required report.

## The Data

Districts submitted written reports to MDE through a secure website. Individual reports necessarily and appropriately included personally identifying information related to specific students, and as such constitute non-releasable data under the Minnesota Government Data Practices Act.<sup>56</sup> MDE prepared a summary of reported data, and has posted all releasable data<sup>57</sup> at: <http://education.state.mn.us/MDE/SchSup/SpecEdComp/ComplMonitor/index.html>.

## Districts Trained In and/or Using Prone Restraint

District	Trained Staff	Reports
Minneapolis (1)	No	1

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<sup>55</sup> Minn. Stat. § 125A.0942, Subd. 3 (2011).

<sup>56</sup> Minn. Stat. § 13.02, Subds. 5, 8a (2011).

<sup>57</sup> In the summary released and made publicly available, the identification of the district linked to any specific incident or report has been anonymized for the purpose of protecting the privacy rights of any specific student involved in an incident of prone restraint. If the district identification had been included, it would be possible to link a specific incident to a specific child with a specific disability, which would constitute a violation of the Minnesota Data Practices Act as an unauthorized release of specifically-identifiable educational data. See Minn. Stat. § 13.02, Subds. 12 and 13.32, Subd. 3 (2011).

District	Trained Staff	Reports
Bemidji (31)	No	1
Pillager (116)	No	1
Moorhead (152)	Yes	7
Brainerd (181)	Yes	9
Orono (278)	No	1
New London Spicer (345)	Yes	6
Willmar (347)	Yes	16
Austin (492)	Yes	12
Rochester (535)	No	2
Duluth (709)	Yes* (after multiple uses)	11
Elk River (728)	Yes	7
Forest Lake ( 831)	Yes	1
Stillwater (834)	Yes	3
Monticello ( 882)	Yes	9
Mankato (77)	Yes	0
Jackson County Central (2895)	Yes	2
Southwest West Central (991)	Yes	9
Northland Learning Center (6076)	Yes	2
Intermediate 287	Yes	86

District	Trained Staff	Reports
Northeast Metro 916	Yes	57
Intermediate 917	Yes	43

### Incidents of Prone Restraint, by District

Prone restraint is a type of “physical holding.”<sup>58</sup> It begins when “body contact” or “physical contact” is initiated for the purpose of “limiting a child’s movement” and ends when “body contact” or “physical contact” ends.<sup>59</sup> In common terms, prone restraint begins when the child is placed in a prone position by one or more trained staff persons holding onto the child; it ends when the child is no longer being held. **That cycle - a hold followed by the release of the hold - constitutes one incident of prone restraint.**

In many reports involving more complex incidents, the district’s report narrative indicated that staff held onto the child in a prone position, released the child when the staff determined that the child had sufficiently calmed, then determined that the child had not sufficiently calmed and/or the child began to re-escalate so the staff again initiated physical contact to hold the child in a prone or other position. In a limited number of cases, this hold/release pattern was repeated a significant number of times before the child returned to the classroom or other activity. Given that the statutory definition of a “physical hold” is based on the presence or absence of “body contact” or “physical contact,” MDE determined that this type of situation involved several incidents of prone restraint – all of which were included on one written report filed with MDE. This determination explains the significant difference between the number of “incidents” that occurred and the number of “reports” MDE received.

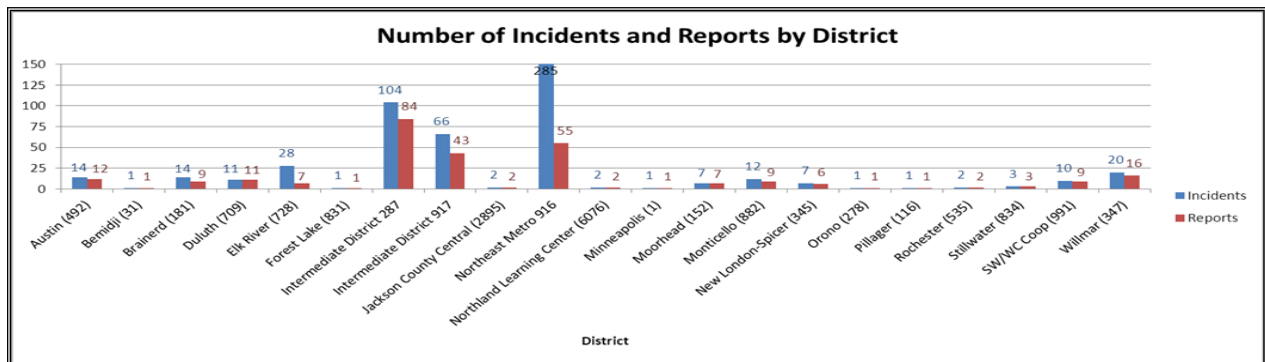
The vast majority of both incidents and reports involved students at one of Minnesota’s three intermediate school districts. This is not surprising given that the intermediate districts provide, among other important services, a program of integrated services for special education students.<sup>60</sup> As a general rule, the intermediate districts provide services to special education students who have not experienced success at their original district, and a significant percentage of these students exhibit atypical behavioral challenges in a school setting.

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<sup>58</sup> See Minn. Stat. § 125A.0941, Subd. (c) (2011).

<sup>59</sup> See Minn. Stat. § 125A.0941, Subd. (c) (2011); Minn. Stat. 125A.0942, Subd. 3(4) (2011).

<sup>60</sup> Minn. Stat. § 136D.01 (2011).



**Incident** = physically holding to limit movement, then releasing the hold

**Report** = written form detailing situation involving one child placed in one or more incidents of prone restraint

A *Report* may detail more than one *Incident* of prone restraint.



<b>Traditional District</b>	<b>Incidents</b>	<b>Reports</b>
Minneapolis (1)	1	1
Bemidji (31)	1	1
Pillager (116)	1	1
Moorhead (152)	7	7
Brainerd (181)	14	9
Orono (278)	1	1
New London Spicer (345)	7	6
Willmar (347)	20	16
Austin (492)	14	12
Rochester (535)	2	2
Duluth (709)	11	11
Elk River (728)	28	7
Forest Lake ( 831)	1	1
Stillwater (834)	3	3
Monticello ( 882)	12	9
Jackson County Central (2895)	2	2
<b>TOTAL</b>	<b>125</b>	<b>89</b>

<b>Miscellaneous Cooperatives</b>	<b>Incidents</b>	<b>Reports</b>
Southwest West Central (991)	10	9
Northland Learning Center	2	2
<b>Total</b>	<b>12</b>	<b>11</b>

<b>Intermediate Districts</b>	<b>Incidents</b>	<b>Reports</b>
287	104	86
916	285	57
917	66	43
<b>TOTAL</b>	<b>455</b>	<b>186</b>

### **Breakdown by Type of District:**

*16 Traditional  
School Districts:*

125 Incidents  
89 Reports

*2 Miscellaneous  
Cooperatives:*

12 Incidents  
11 Reports

*3 Intermediate  
School Districts*

455 Incidents  
186 Reports

### **Breakdown by Geographic Location:**

*Eleven County  
Metro Area:*

489 Incidents  
199 Reports

*Greater  
Minnesota:*

103 Incidents  
87 Reports

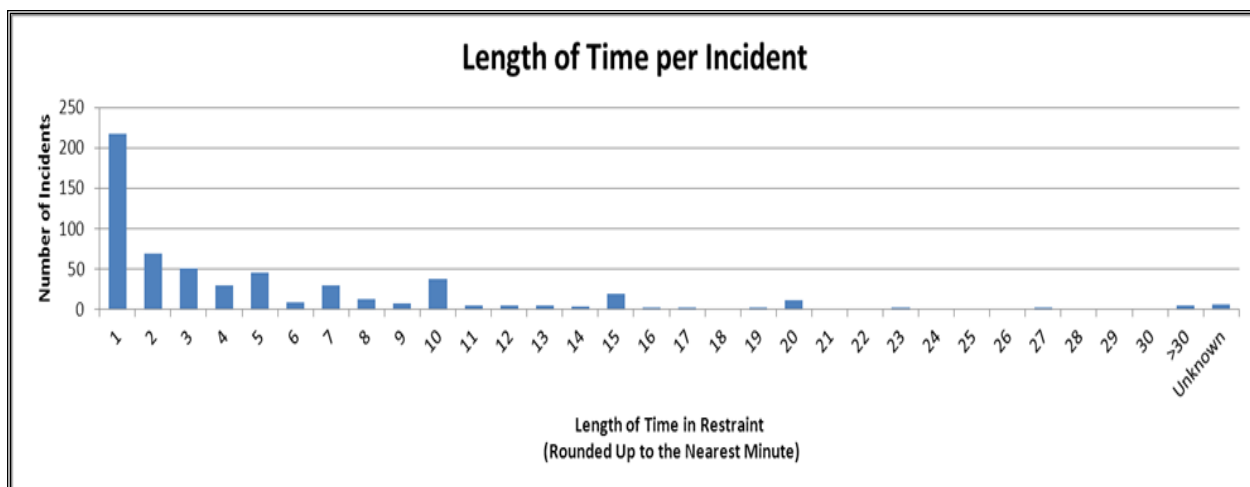
<b>District</b>	<b>Reports filed</b>	<b>Incidents reported</b>	<b>Students with multiple incidents per report</b>
Brainerd (181)	9	14	2
Willmar (347)	16	20	1
Austin (492)	12	14	2
Elk River (728)	7	28	1
Monticello (882)	9	12	1
SW West Central (991)	9	10	1
Intermediate District 287	86	104	6
Northeast Metro 916	57	285	6
Intermediate District 917	43	66	7

### **Length of Incident of Prone Restraint**

The data indicates that approximately half of the 455 incidents of prone restraint lasted for a minute or less; nearly 90% of the incidents lasted less than five minutes. The reported data does not contain sufficient information for the Department to substantiate whether districts that utilized significantly longer periods of prone restraint had properly determined this form of restrictive procedure to be “the least intrusive intervention that effectively responds to the emergency,” as required by law.<sup>61</sup>

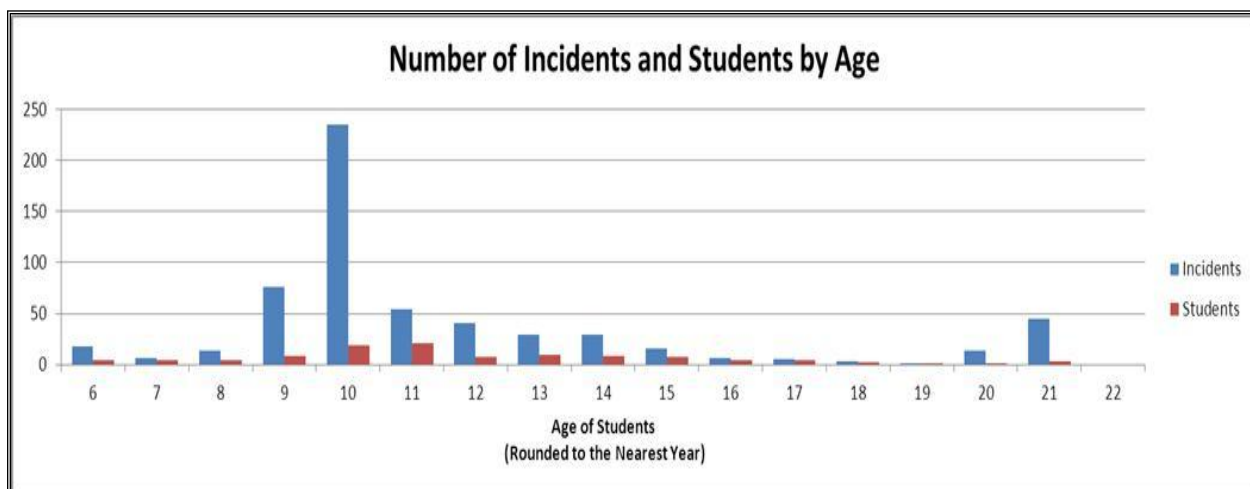
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<sup>61</sup> Minn. Stat. § 125A.0942, Subd. 3(1) (2011).



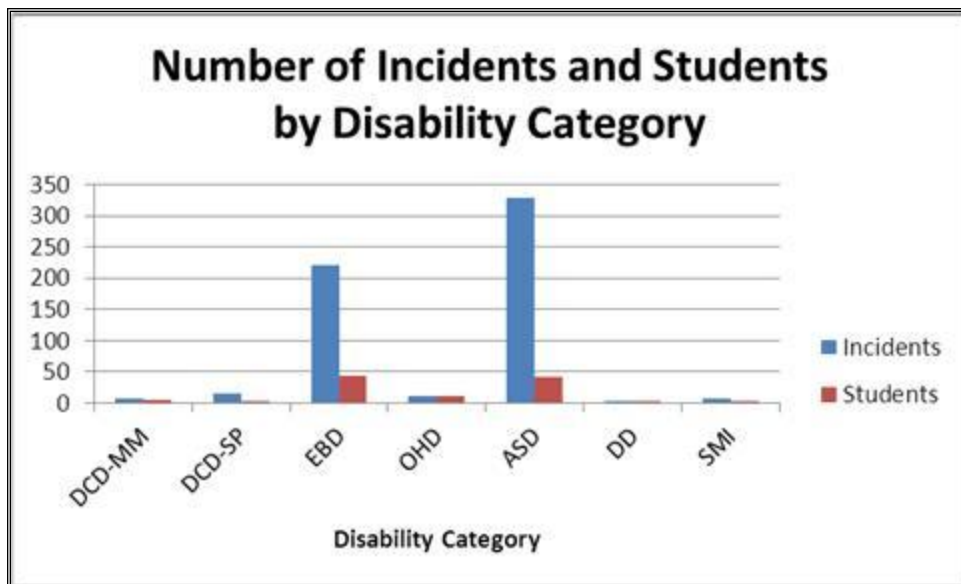
### Age of Students Placed in Prone Restraint

As indicated in the table below, prone restraint was used on children as young as 6 years old and as old as 21.



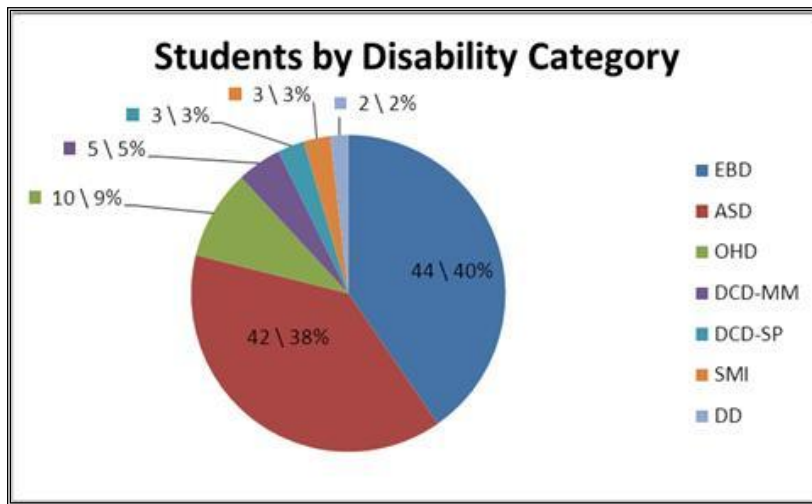
### Students and Incidents by Disability Category

Overall, 78% of all incidents of prone restraint in the relevant time period involved students who were eligible for special education under the following eligibility criteria: Autism Spectrum Disorders (ASD) or Emotional or Behavioral Disorders (EBD). The charts below illustrate both the number and percentage of students upon whom prone restraint was used, in comparison to the percentages of these students within the state's total special education population and within the student populations served by the state's three intermediate school districts.



*See key on next page*

## Students (Percentage and Number) Involved in Prone Restraint by Disability Category



Key

EBD = Emotional or Behavioral Disorders

ASD = Autism Spectrum Disorders

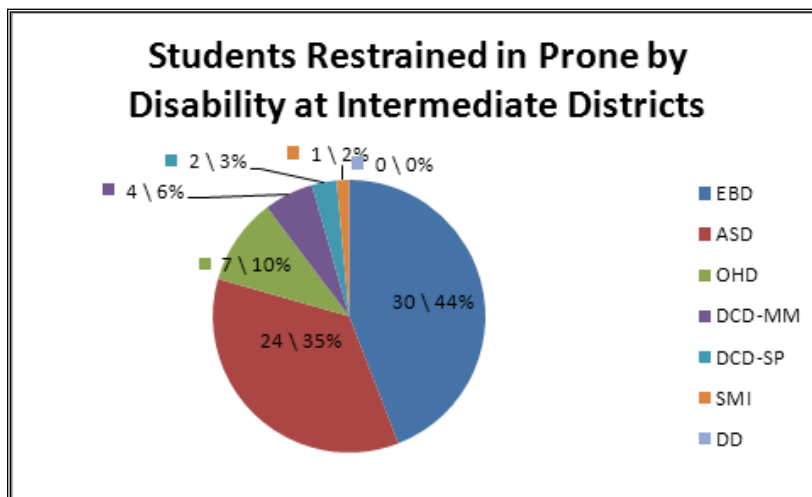
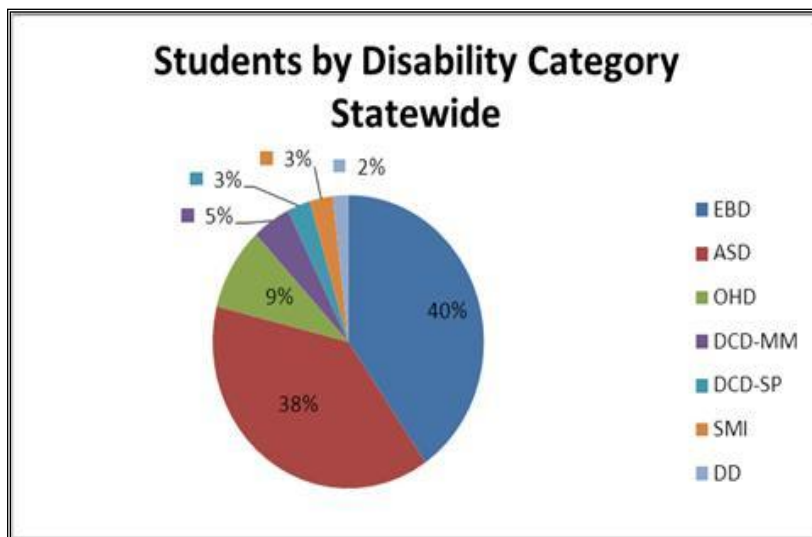
OHD = Other Health Disabilities

DCD = Developmental  
-MM Cognitive Disability-Mild to Moderate

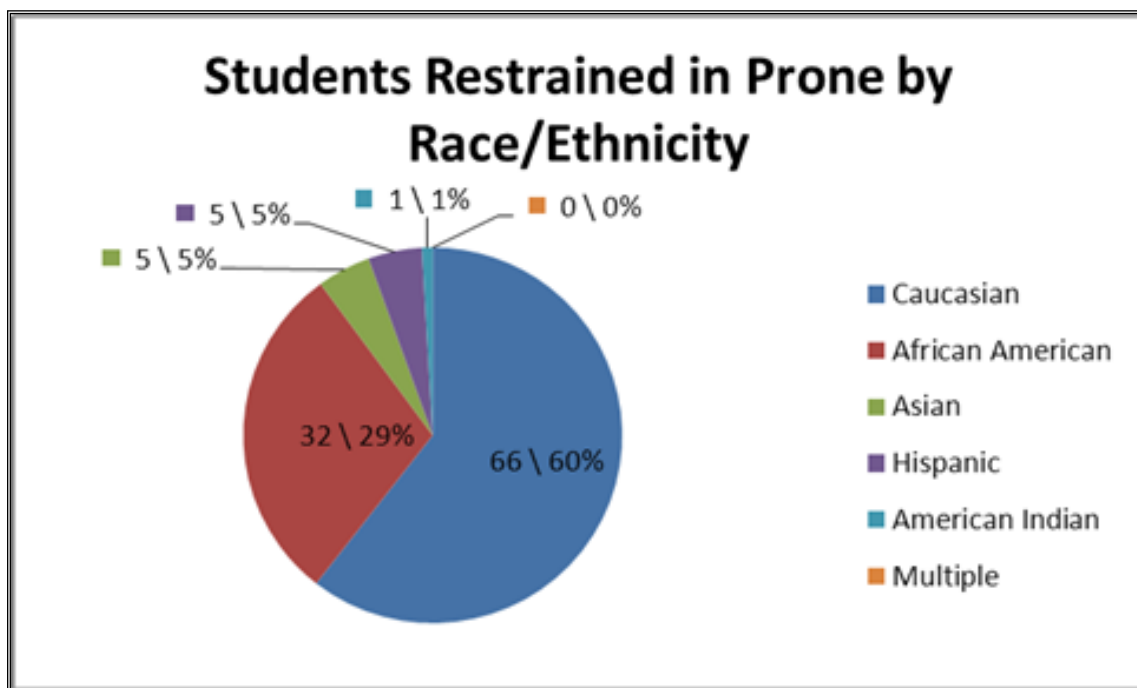
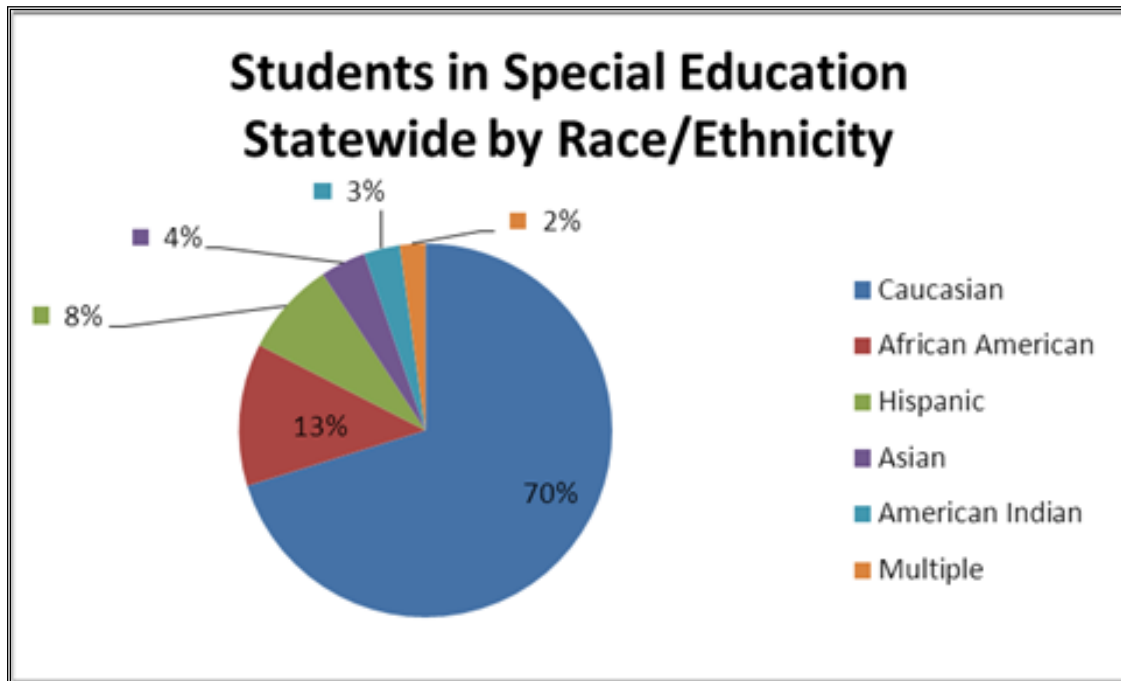
DCD = Developmental  
-SP Cognitive Disability-Severe to Profound

SMI = Severely Multiply Impaired

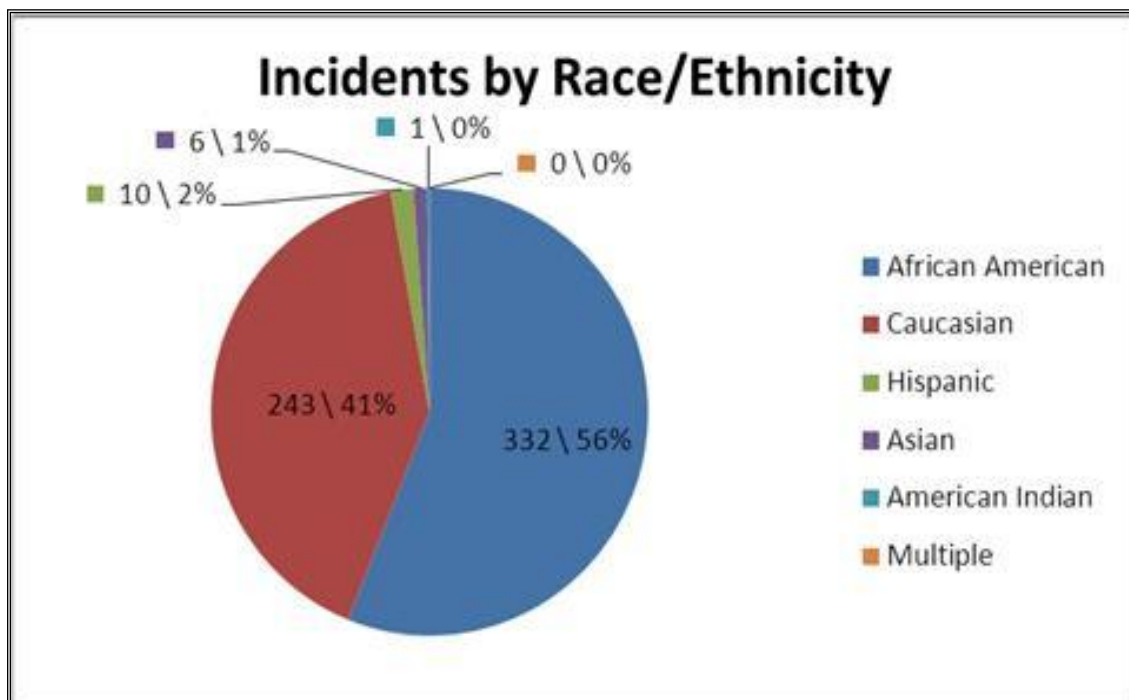
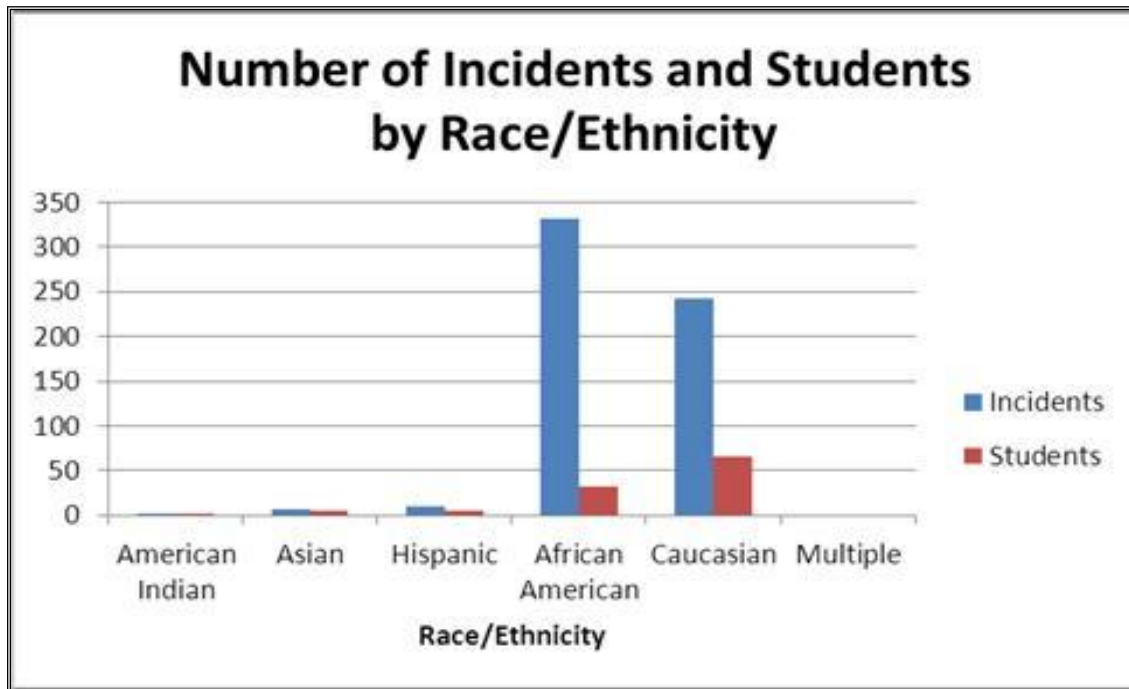
DD= Developmental Delay



## Students Involved In Prone Restraint by Race/Ethnicity

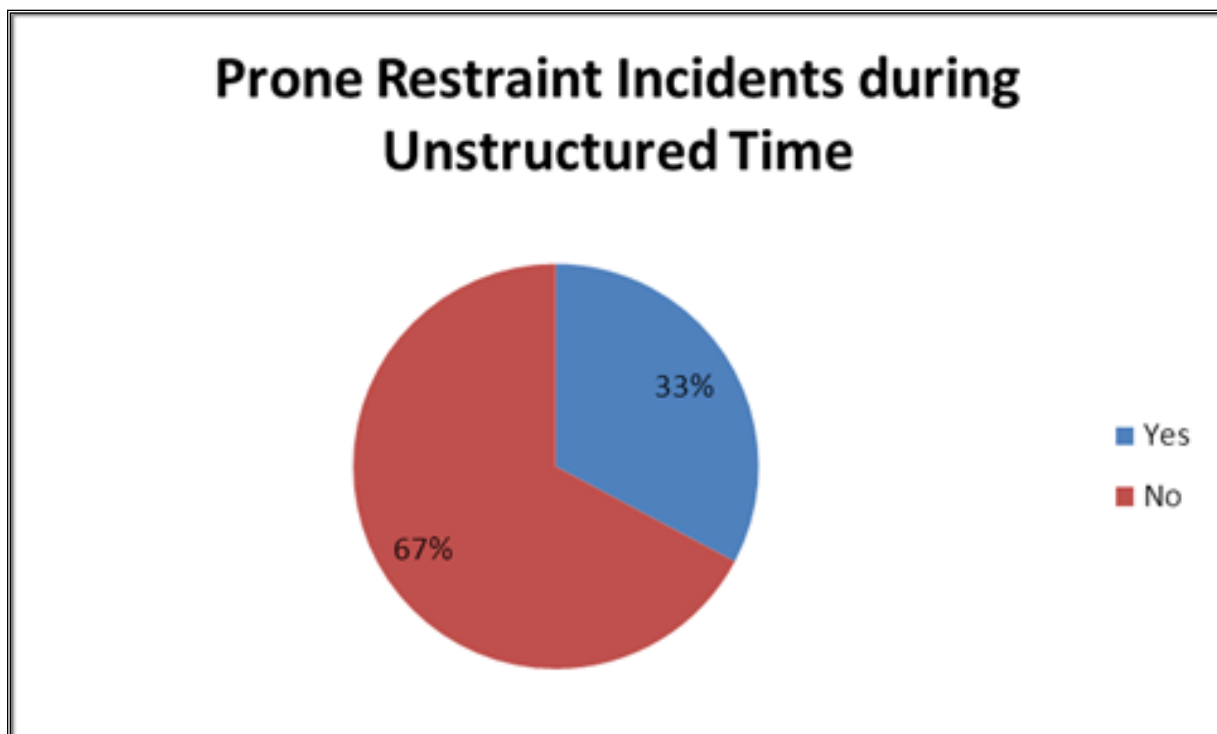


## Students Involved In Incidents of Prone Restraint - by Race/Ethnicity



### **Circumstances Precipitating Use of Prone Restraint**

The Department examined the data to determine whether prone restraint was used more often following a student's participation in a non-classroom, unstructured activity, such as lunchtime in the cafeteria, passing time in a hallway, or physical activity in a gymnasium or other indoor or outdoor space. The majority of incidents occurred during time periods considered by the reporter to be structured. However, many of the reports lacked sufficient detail for determining the proportion of structured versus unstructured time during each student's day. Without that valuable reference, the data does not support a conclusion related to whether the structured nature of a student's activities can be correlated to the use of prone restraint.





## RECOMMENDATIONS FOR IMPROVEMENT

The Minnesota Department of Education, under the leadership of Commissioner Brenda Cassellius, is committed to ensuring that all students and all staff are safe in the environments in which they learn and work. The Department is also committed to working with the Minnesota Legislature and all interested stakeholders, including parents, educators, school administrators and community leaders, to make sure that schools have necessary and effective tools to support safety while we work together to eliminate the use of prone restraint and minimize the use of other restrictive procedures in Minnesota. Whether the Legislature chooses to commence that work immediately or after allowing data collection to continue under the prone restraint statute for another full year to better establish a baseline of data, the Department looks forward to assisting the Legislature in this important work in a manner that best serves the needs of both students and the public school districts that serve them. In this regard, MDE respectfully offers the following recommendations for improvement.

### 1. Support PBIS

The Department recommends that the Legislature support the efforts of the Minnesota Board of Teaching, the Minnesota Board of School Administrators, the educator preparation institutions, and MDE as these organizations work collaboratively to successfully incorporate individual and school-wide positive behavioral interventions and support (PBIS) into schools throughout Minnesota. Continuing to embed specific knowledge and skill competencies related to PBIS practices into the standards of quality practice for the state's general and special educators and school administrators will have a positive effect on reducing the use of all restrictive procedures in schools.

PBIS includes **systems** to support adults in achieving clear and measurable **outcomes** by correctly implementing identified **evidence-based practices** and **using data** to gauge progress. With PBIS, schools establish a whole-school culture and intensive individual behavior supports to achieve social, behavioral and academic gains while minimizing problem behaviors and ensuring staff safety.

**PBIS is not** a specific curriculum, intervention or practice.

**PBIS is** a decision-making framework that guides selection, integration, and implementation of scientifically-based behavioral practices for improving outcomes for all students.<sup>62</sup>

At present, 15.6% of Minnesota's public schools and districts, representing some 200,000 students, have been involved with training to implement PBIS systems within 300 schools and their related districts. MDE expects districts' engagement in PBIS to climb exponentially each year in the foreseeable future. More information about PBIS is available in Attachment C and at <http://education.state.mn.us/MDE/EdExc/SpecEdClass/PositBehaInterv/005869>.

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<sup>62</sup> Horner, R. & Sugai, G. (2009, April 29). Considerations for seclusion and restraint use in school-wide positive behavior supports. Retrieved from <http://www.pbis.org/seclusion/restraint/default.aspx>.

## 2. Clarify Definitions: What Is and Is Not Allowed

While Minnesota's statute refers to the allowed use of "prone restraint" in specified circumstances, it does not allow any type of physical holding that "impairs the child's ability to breathe."<sup>63</sup> Given the disagreement in the evidence-based literature regarding whether any type of prone restraint can be administered without in some measure "impair[ing] the child's ability to breathe," the statute is read by some in the field to be internally inconsistent and therefore confusing.

The Legislature should clarify which types of physical holding are allowed, and which types are not, by providing more specific definitions of utilized terms. To aid policy-makers in this task, Attachment B contains an identification of legislative language recently introduced at the federal level and statutory language or policy guidance currently in effect in other states with respect to the use of prone restraint in both school and non-school settings. Currently, at least twenty-nine states have legislation and/or education agency regulations that prohibit the use of prone restraints or restraints that impede a child's ability to breathe within the school setting, as follows:

- Fifteen states specifically prohibit the use of prone restraint,<sup>64</sup> which is defined as any restraint in which a child is held "face down" and/or in which physical pressure is exerted on the child's torso, head or neck to keep the student in a prone position.
- Twelve states prohibit the use of restraints that impede a child's ability to breathe<sup>65</sup> without making any reference to prone restraint.
- Only two states (Vermont and Minnesota) prohibit the use of restraints that impede a child's ability to breathe and specifically allow the use of prone restraint in limited circumstances.

An examination of all of these authorities reveals several clarifying amendments that would benefit educators and families in Minnesota. Specifically, when it amends the statute the Legislature should make the following changes.

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<sup>63</sup> Minn. Stat. § 125A.0942, Subd. 3(7) (2011).

<sup>64</sup> California, District of Columbia, Georgia, Iowa, Maryland, Michigan, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Wisconsin, and Wyoming.

<sup>65</sup> Alabama, Colorado, Connecticut, Florida, Louisiana, Maine, Massachusetts, Missouri, New Hampshire, New Mexico, Tennessee, and Washington.

## **A. Define What Is Allowed**

When it undertakes statutory improvements with respect to prone restraint, the Legislature should amend the statute to define exactly what constitutes “prone restraint” in Minnesota. The Department recommends that the following definition be amended into the statute, as it has been in many other states:<sup>66</sup>

(e) “Prone restraint” means placing a child in a face down position.<sup>67</sup>

## **B. Define What Is Not Allowed**

The overarching public purpose supporting the statute is the need to keep students safe in their schools. The Legislature has enacted that policy by prohibiting any type of restraint that “restricts or impairs a child’s ability to breathe.”<sup>68</sup> All evidence-based research supports this prohibition, as does the professional training available to Minnesota districts which specifically teaches school staff not to place any pressure on a student’s torso, head or neck while utilizing prone restraint. MDE supports strengthening this prohibition by amending the definition of what is currently prohibited in Minnesota to be consistent with the evidence-based research, professional training and numerous other states’ legislation.<sup>69</sup> The amendment could provide as follows:

Subd. 4. Prohibitions.

The following actions or procedures are prohibited: ...

(9) physical holding that restricts or impairs a child’s ability to breathe, restricts or impairs a child’s ability to communicate distress, places pressure or weight on a child’s head, throat, neck, chest, lungs, sternum, diaphragm, back or abdomen, or straddles a child’s torso.<sup>70</sup>

## **C. Define Required Purpose**

When it undertakes statutory improvements with respect to prone restraint, the Legislature should amend the statute to specify the intended purpose served by its use by adding the following language:

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<sup>66</sup> Iowa, Michigan, Oregon, Pennsylvania, Vermont, Ohio.

<sup>67</sup> See proposed legislative language changes included in Attachment A, at proposed Minn. Stat. § 125A.0941 (e) (2011).

<sup>68</sup> Minn. Stat. § 125A.0942, Subd. 4(9) (2011).

<sup>69</sup> Alabama, Colorado, Connecticut, Louisiana, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Mexico, Oklahoma, Tennessee, Washington and Wyoming.

<sup>70</sup> See proposed legislative language changes included in Attachment A, at proposed Minn. Stat. § 125A.0942, Subd. 4 (9).

(c) “Physical holding” means physical intervention intended to hold a child immobile or limit a child’s movement and where body contact is the only source of physical restraint, which immobilization is accomplished for the purpose of effectively gaining control of an aggressive or agitated child as a means of protecting a child or other individual from physical injury.<sup>71</sup>

The statute currently defines prone restraint as a subset of allowed “physical holding.”<sup>72</sup> “Physical holding” is defined only in terms of the actions taken, not the purpose served: “‘Physical holding’ means physical intervention intended to hold a child immobile or limit a child’s movement and where body contact is the only source of physical restraint.”<sup>73</sup>

This definition does not specify that the restraint is being used for the purpose of appropriately controlling a child’s behavior in order to prevent harm. In the data collected to date, a few reported instances appear to indicate that staff’s purpose was to punish a child for bad behavior or to prevent what was anticipated to be additional bad behavior. Understanding that this was not the Legislature’s intent in allowing the use of prone restraint, MDE recommends that the statute be amended consistent with the definition set forth above.

#### **D. Allow Appropriate Comforting Touch**

Districts have reported that some parents and educators misunderstand that the statute prohibits school staff from hugging a child who is visibly upset for appropriate reasons. To alleviate those concerns, upon amendment of the statute the Department recommends that the Legislature include language similar to that included in other states’ laws<sup>74</sup> to specifically allow school staff to provide developmentally appropriate, comforting touch to students as a specified exception to the definition of prohibited “physical holding.” This amendment should help alleviate those concerns.

(c) “Physical holding” means physical intervention intended to hold a child immobile or limit a child’s movement and where body contact is the only source of physical restraint. The term physical holding does not mean physical contact that:

...

(5) constitutes brief holding of a child by one adult for the purpose of calming or comforting the child.<sup>75</sup>

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<sup>71</sup> See proposed legislative language changes included in Attachment A, at proposed Minn. Stat. § 125A.0941(c) (2011).

<sup>72</sup> Minn. Stat. § 125A.0941, Subd. (c) (2011).

<sup>73</sup> Minn. Stat. § 125A.0941, Subd. (c) (2011).

<sup>74</sup> Colorado, 1 Colo. Code Reg. § 301-45, 2620-R-2.00(6)(c)(ii) (2009); Louisiana, La. Rev. Stat. § 17:416.21(A)(3)(b)(iii) (2011); Michigan, Michigan State Bd. of Educ.: Supporting student behavior: standards for the emergency use of seclusion and restraint, p. 13 (2006).

<sup>75</sup> See proposed legislative language changes included in Attachment A, at proposed Minn. Stat.

### 3. Impose an Age Limit

Based on evidence-based research that questions the long-term developmental harm that can be caused to a young child subjected to any form of restraint,<sup>76</sup> the Department opposes the use of prone restraint on any student younger than age 5 and/or not yet attending kindergarten. The Department respectfully recommends that the Legislature include such an age limit in the statute upon its amendment.

Currently, the prone restraint statute contains no stated age limit. It does define the authority to use prone restraint in the context of the use of restrictive procedures by schools. MDE interprets this language as legislative direction to limit the use of prone restraint to children who are of at least kindergarten age, that being defined in law as “five years of age on September 1” of the academic year.<sup>77</sup> To clarify legislative intent, the Department recommends that the statute be amended as follows:

(7) Until August 1, 2012, a school district may use prone restraints with respect to children who are at least five years of age under the following conditions:<sup>78</sup>

The Legislature should note that this amendment does not specify the authority of a district that operates an Early Childhood Family Education (ECFE) or Head Start or Early Head Start program to use prone restraint with respect to these very young children. MDE has received multiple inquiries from districts and representatives of the early childhood community seeking to verify authority to utilize prone restraint on preschool-aged children, though the collected data does not yet indicate that prone restraint has been used with a child younger than age six. The Department recommends that the Legislature clarify its intent in this regard.

### 4. Require Advance Medical Certification

The Department recommends that, upon amendment, the statute allow the use of prone restraint only if the district has obtained medical certification of approval prior to its use. The prone restraint statute then would more closely mirror the Rule 40 limitations that apply in DHS-licensed facilities, which require prior consultation with an individual’s treating physician

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§ 125A.0941 (c) (5) (2011).

<sup>76</sup> Greene, R., Ablon, S. & Martin, A. Use of collaborative problem solving to reduce seclusion and restraint in child and adolescent inpatient units. *Psychiatric Services*, 56, 610-612; Amos, P. New considerations in the prevention of aversives, restraint, and seclusion: incorporating the role of relationships into an ecological perspective. *Research and Practice for Persons with Severe Disabilities*, 29, 263-272; Mohr, W., Mahon, M., & Noone, M. A restraint on restraints: the need to reconsider the use of restrictive interventions. *Archives of Psychiatric Nursing*, XII, 95-106.

<sup>77</sup> Minn. Stat. § 120A.05, Subd. 10a (2011).

<sup>78</sup> See proposed legislative language changes included in Attachment A, at proposed Minn. Stat. § 125A.0942, Subd. 3(7) (2011).

“to determine whether the procedure is medically contraindicated.”<sup>79</sup> The following language would accomplish this amendment:

(v) a district, prior to using prone restraints, must obtain from the child’s medical provider a certification that the child has no ~~review any~~ known medical or psychological limitations that contraindicate the use of prone restraints.<sup>80</sup>

Pursuant to standard practice in Minnesota’s public schools, neither general education nor special education students are allowed to participate in school-sponsored athletics without first providing the school with medical certification that they have no medical or other conditions that should prevent physical activity.<sup>81</sup> Every hockey player, wrestler, dancer and gymnast is required to undergo a physical every three years and to submit their doctor’s approval annually before they are allowed to participate in school sports.

Although undergoing prone restraint is not similarly a voluntary activity, it is a very physical activity that most often involves significant physical resistance and avoidance activities. Currently, the statute does not require advance medical certification but instead requires only that, prior to using prone restraint, a district “review any known medical or psychological limitations that contraindicate the use of prone restraints.”<sup>82</sup>

## **5. Strengthen FBA Competencies**

The Department will continue to commit available resources to providing state-wide training opportunities for the purpose of certifying that educators are proficient in performing functional behavioral assessments (FBAs). FBAs are used to identify why problem behaviors continue to occur. Increasing the capacity of school teams to conduct comprehensive FBAs and effectively link results to intervention plans will decrease the need to resort to prone restraint.

The restrictive procedures statute requires that, following two instances of restrictive procedures, including prone restraint, a student’s IEP Team will meet to consider, among other topics, modifying the IEP or Behavior Intervention Plan (BIP) to include or exclude prone restraint. Best practices would indicate that no form of restraint should be included in a student’s plans or anticipated for use with a student without the completion of a formal FBA.

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<sup>79</sup> Minn. R. 9525.2750, Subp. 1, H.

<sup>80</sup> See proposed legislative language changes included in Attachment A, at proposed Minn. Stat. § 125A.0942, Subd. 3(7)(v) (2011).

<sup>81</sup> MSHSL Bylaw 305.00 1B, retrieved at <http://mshsl.org/mshsl/Publications/code/handbook/HandbookTOC.htm?ne=8>.

<sup>82</sup> Minn. Stat. § 125A.0942, Subd. 3(7)(v) (2011).

## **6. Strengthen Pre-Enrollment Screening**

For students facing a change of educational placement as a result of significantly challenging behavior, existing behavior-related data exists in the sending district to inform the discussion of appropriate placement options. Best practice would require supplementation and use of the sending district's data – prior to change of placement - to inform the receiving districts' plan for modifying the behavior(s) and ensuring safety in the event of an emergency. Pre-enrollment screening for change of placement should be conducted for students exhibiting challenging behaviors in order to pair consequences (both in emergency and in modification) with individual needs. This screening data should include a current (within the past 30 days) functional behavior assessment to ensure that receiving districts are able to design behavior response plans that are specific to the needs of the individual.

Very often, intermediate school districts are the receiving districts in these situations. By relying on thorough pre-enrollment screening based on a detailed report of what interventions were used in prior placements and to what effect, intermediates and other receiving districts will be better equipped to address the needs of each of their students. With this data, intermediate districts will have more effective tools for designing individualized and instructional behavior improvement plans that reflect which interventions are considered the least restrictive, most effective and least potentially traumatizing for the particular child at issue.

## **7. Consider Intermediates-Only Limitation**

The Legislature's careful analysis of the data related to the appropriate use of prone restraint may lead it to consider allowing limited use of prone restraint only by intermediate school districts. Intermediate districts are the public school districts tasked with addressing the needs of the majority of school children with significantly challenging behaviors. This approach would have some obvious benefits: allowing prone restraint to be used only by staff that are more experienced experts in the area of behavioral intervention; facilitating more focused training efforts on a smaller number of district staff; and concentrating expertise in the procedure, which should minimize the potential of misuse or abuse.

## **8. Implement Best Practices in Monitoring and Reporting**

Even in the short data collection timeframe reflected in this report, the Department has identified the use of best practices designed to maximize the safety of students and staff and accurately monitor the effects of the use of prone restraint on individual students. All of the practices set forth below are operationalized in at least one of the intermediate school districts, to which MDE provides full credit for the substance of the following recommendations.

- During a prone restraint, a district should be required to have present a nurse or other medical professional in the school setting for the purpose of monitoring the student's physical status while in prone restraint.

- A district should be required to implement a minute-by-minute, real time recording of the incident by an observer not involved in conducting the restraint.

The statute could be amended as follows to incorporate these existing best practices:

Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

...

(3) staff must directly observe the child while physical holding or seclusion is being used and must simultaneously record their observations in specific and sufficient detail to provide minute-to-minute data relevant to the procedure;

(4) physical holding must be observed by a nurse or other medical professional in the school setting for the purpose of monitoring the student's physical status;<sup>83</sup>

## **9. Improve Data Reporting**

### **A. Require Reporting of All Restrictive Procedures**

The prone restraint data collected to date by MDE relates only to the smallest category of restrictive procedures used by districts. Analyzing this data out of the context of the information related to other forms of restraint and seclusion provides only an incomplete picture of the situations faced by districts and experienced by students in Minnesota's schools. Districts are already required by law to document their use of all other restrictive procedures.<sup>84</sup> The Department recommends that the Legislature require districts to report to MDE all instances of their use of restrictive procedures for the same period of time that they are required to report prone restraint data,<sup>85</sup> and that MDE include that data in all subsequent reports submitted to the Legislature. With this more complete data, policy-makers will better understand the context and scale of the use of all restrictive procedures including prone restraint and will be better equipped to support effective efforts to reduce the use of all restrictive procedures throughout the state while still ensuring school safety.

### **Standardize Reporting Form**

MDE recommends that the Legislature require districts to use MDE's reporting form. Standardizing the reporting format will ensure that districts report all required data in a timely

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<sup>83</sup> See proposed legislative language changes included in Attachment A, at proposed Minn. Stat. § 125A.0942, Subd. 3(3),(4) (2011).

<sup>84</sup> Minn. Stat. § 125A.0942, Subd. 3(4) (2011).

<sup>85</sup> In the alternative, the Legislature should require districts that use prone restraint to report to MDE, for reporting to the Legislature, all other restrictive procedures utilized with respect to the identified child prior to the use of prone restraint.



manner, and preserve resources currently expended in the Department's efforts to follow-up on incomplete reports. Standardization will also allow MDE to develop a more effective web-based reporting system, which will streamline the reporting process and save resources for both the Department and districts.

The amendment could be accomplished with the following statutory revision:

(iv) each incident of the use of prone restraints is reported to the department within five working days on a form provided by the department ~~or on a district's restrictive procedure documentation form~~,<sup>86</sup>

## **10. Sunset Date**

The Legislature should amend the statute's sunset provision to June 30, rather than August 1, of the applicable year. The June 30<sup>th</sup> date corresponds with the close of public school districts' fiscal year and is a date when legislative changes affecting schools are most easily accomplished.

## **CONCLUSION**

The Minnesota Department of Education respectfully submits this report in an effort to provide the Legislature with objective data to inform its continuing policy discussions regarding the difficult topic of prone restraint. This topic is not unique to Minnesota, or to educational institutions. As they have historically, states and governmental agencies will continue to balance evidence-based data with anecdotal reports of challenging student behaviors as they seek to ensure the safety of a vulnerable student population and the adult staff who serve them.

The Department anticipates the data provided, with its acknowledged limitations, will result in informed decision-making promoting healthy student development within safe educational environments in Minnesota. The Department appreciates the opportunity to inform a task of this magnitude, and commends the Legislature for its continued commitment to this important work.

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<sup>86</sup> See proposed legislative language changes included in Attachment A, at proposed Minn. Stat. § 125A.0942, Subd. 3(7)(iv) (2011).

# Attachment A

In the statutory language included below, the Department's suggested additions are noted in underlining and deletions are noted as ~~strikeouts~~.

## Minnesota Statutes Section 125A.0941

### 125A.0941 DEFINITIONS.

(a) The following terms have the meanings given them.

(b) "Emergency" means a situation where immediate intervention is needed to protect a child or other individual from physical injury or to prevent serious property damage.

(c) "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement and where body contact is the only source of physical restraint, which immobilization is accomplished for the purpose of effectively gaining control of an aggressive or agitated child as a means of protecting a child or other individual from physical injury. The term physical holding does not mean physical contact that:

(1) helps a child respond or complete a task;

(2) assists a child without restricting the child's movement;

(3) is needed to administer an authorized health-related service or procedure; ~~or~~

(4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal; or;

(5) constitutes brief holding of a child by one adult for the purpose of calming or comforting the child.

(d) "Positive behavioral interventions and supports" means interventions and strategies to improve the school environment and teach children the skills to behave appropriately.

(e) "Prone restraint" means placing a child in a face down position.

(f) "Restrictive procedures" means the use of physical holding or seclusion in an emergency.

~~(fg)~~ "Seclusion" means confining a child alone in a room from which egress is barred. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

# Minnesota Statutes Section 125A.0942

## 125A.0942 STANDARDS FOR RESTRICTIVE PROCEDURES.

### **Subdivision 1.**Restrictive procedures plan.

Schools that intend to use restrictive procedures shall maintain and make publicly accessible a restrictive procedures plan for children that includes at least the following:

- (1) the list of restrictive procedures the school intends to use;
- (2) how the school will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee; and
- (3) a written description and documentation of the training staff completed under subdivision 5.

### **Subd. 2.**Restrictive procedures.

(a) Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, behavior analyst certified by the National Behavior Analyst Certification Board, a person with a master's degree in behavior analysis, other licensed education professional, paraprofessional under section 120B.363, or mental health professional under section 245.4871, subdivision 27, who has completed the training program under subdivision 5.

(b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (d).

(c) When restrictive procedures are used twice in 30 days or when a pattern emerges and restrictive procedures are not included in a child's individualized education program or behavior intervention plan, the district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. At the meeting, the team must review any known medical or psychological limitations that contraindicate the use of a restrictive

procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

(d) An individualized education program team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

### **Subd. 3. Physical holding or seclusion.**

Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

(1) the physical holding or seclusion must be the least intrusive intervention that effectively responds to the emergency;

(2) physical holding or seclusion must end when the threat of harm ends and the staff determines that the child can safely return to the classroom or activity;

(3) staff must directly observe the child while physical holding or seclusion is being used and must simultaneously record their observations in specific and sufficient detail to provide minute-to-minute data relevant to the procedure;

(4) physical holding must be observed by a nurse or other medical professional in the school setting for the purpose of monitoring the student's physical status;;

(4~~5~~) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion shall document, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding or seclusion began and the time the child was released; and

(iv) a brief record of the child's behavioral and physical status;

(5) the room used for seclusion must:

(i) be at least six feet by five feet;

- (ii) be well lit, well ventilated, adequately heated, and clean;
  - (iii) have a window that allows staff to directly observe a child in seclusion;
  - (iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;
  - (v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and
  - (vi) not contain objects that a child may use to injure the child or others;
- (6) before using a room for seclusion, a school must:
- (i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and
  - (ii) register the room with the commissioner, who may view that room; and
- (7) until ~~August 1~~ June 30, 2012, a school district may use prone restraints with respect to children who are at least five years of age under the following conditions:
- (i) a district has provided to the department a list of staff who have had specific training on the use of prone restraints;
  - (ii) a district provides information on the type of training that was provided and by whom;
  - (iii) prone restraints may only be used by staff who have received specific training;
  - (iv) each incident of the use of prone restraints is reported to the department within five working days on a form provided by the department ~~or on a district's restrictive procedure documentation form~~; and
  - (v) a district, prior to using prone restraints, must obtain from the child's medical provider a certification that the child has no ~~review any~~ known medical or psychological limitations that contraindicate the use of prone restraints.

The department will report back to the chairs and ranking minority members of the legislative committees with primary jurisdiction over education policy by February 1, 2012, on the use of prone restraints in the schools.

#### **Subd. 4. Prohibitions.**

The following actions or procedures are prohibited:

- (1) engaging in conduct prohibited under section 121A.58;
- (2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;
- (3) totally or partially restricting a child's senses as punishment;
- (4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;
- (5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;
- (6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under section 626.556;
- (7) withholding regularly scheduled meals or water;
- (8) denying access to bathroom facilities; and
- (9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back or abdomen, or straddles a child's torso.

## **Subd. 5. Training for staff.**

(a) To meet the requirements of subdivision 1, staff who use restrictive procedures shall complete training in the following skills and knowledge areas:

- (1) positive behavioral interventions;
- (2) communicative intent of behaviors;
- (3) relationship building;
- (4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;
- (5) de-escalation methods;

- (6) standards for using restrictive procedures;
  - (7) obtaining emergency medical assistance;
  - (8) the physiological and psychological impact of physical holding and seclusion;
  - (9) monitoring and responding to a child's physical signs of distress when physical holding is being used; and
  - (10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used.
- (b) The commissioner, after consulting with the commissioner of human services, must develop and maintain a list of training programs that satisfy the requirements of paragraph (a). The district shall maintain records of staff who have been trained and the organization or professional that conducted the training. The district may collaborate with children's community mental health providers to coordinate trainings.

#### **Subd. 6. Behavior supports.**

School districts are encouraged to establish effective schoolwide systems of positive behavior interventions and supports. Nothing in this section or section 125A.0941 precludes the use of reasonable force under sections 121A.582; 609.06, subdivision 1; and 609.379.

## **Attachment B**

### **B-1 Federal Legislative proposals Relating to Prone Restraint or Restraint that Restricts a Child's Ability to Breathe Within the School Setting**

B-2 Legislative Language or Policy Guidance Currently in Effect in All States Relating Specifically to Prone Restraint or Restraint that Restricts a Child's Ability to Breathe Within the School Setting

B-3 Recently Enacted Language Relating to Prone Restraint or Restraint that Restricts a Child's Ability to Breathe in Non-School Settings



## ATTACHMENT B-1

Federal Legislative Proposals Relating to Prone Restraint or Restraint that Restricts a Child's Ability to Breathe Within the School Setting

Date Introduced	Citation	Language
Dec. 16, 2011	Keeping All Students Safe Act  SB 2020  (Senator Harkin)	Prohibits, among other things, "physical restraint that is life-threatening, including physical restraint that restricts breathing;" and "physical restraint if contraindicated based on the student's disability, health care needs, or medical or psychiatric condition, as documented in a health care directive or medical management plan, a behavior intervention plan, an IEP or IFSP, 504 plan or other relevant record made available to the State or local educational agency."
April 6, 2011	Keeping All Students and Staff Safe Act  HR 1381	Prohibited "physical restraint that restricts breathing, and physical restraint if contraindicated based on the student's disability, health care needs, medical or psychiatric condition as documented in a health care directive/medical management plan, a behavior intervention plan, an IEP/IFSP, or 504 plan, or other relevant record made available to the LEA."
2010	Preventing Harmful Restraints and Seclusion in Schools  HR 4247  (Rep. George Miller)  SB 2860  (Rep. Dodd)	Prohibited "physical restraint or physical escort that restricts breathing."

## ATTACHMENT B-2

Legislative Language or Policy Guidance Currently in Effect in All States Relating Specifically to Prone Restraint or Restraint that Restricts a Child's Ability to Breathe Within the School Setting

State	Citation	Language
Alabama	Ala. Admin. Code r. 290-3-1-.02(1)(f)(1)	Prohibits: "(iv) Physical Restraint that restricts the flow of air to the student's lungs—Any method (face-down, face-up, or on your side) of physical restraint in which physical pressure is applied to the student's body that restricts the flow of air into the student's lungs. Use of this type of restraint is prohibited in Alabama public schools and educational programs."
California	Cal. Code Regs. tit. 5, § 3052(l)(5)	Prohibitions. "Restrictive interventions which employ a device or material or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention"
Colorado	1 Colo. Code Reg. §§ 301-45, 2620-R-2.00 <i>et seq.</i>	2620-R-2.00(4) defines "positional asphyxia" to mean "an insufficient intake of oxygen as a result of body position that interferes with one's ability to breathe." 2620-R-2.02(1)(a) "the public education program shall ensure that: (i) no restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating; (ii) no restraint is administered in such a way that places excess pressure on the student's chest, back, or causes positional asphyxia."
Connecticut	Conn. Gen. Stat. §§ 46a-150 to 46a-154	(4) defines "life-threatening physical restraint" to mean "any physical restraint or hold of a person that restricts the flow of air into a person's lungs, whether by chest compression or any other means." The use of life-threatening physical restraint is prohibited.
District of Columbia	57 D. C. Reg. 9457	2818.1 "Nonpublic special education school or program shall not use any form of prone restraint on a District of Columbia student. Use of such restraints as a policy or practice shall be grounds for denying or revoking a certificate of approval."

State	Citation	Language
Florida	Fla. Stat. § 1003.573	(4) Prohibited restraint. "School personnel may not use a mechanical restraint or a manual or physical restraint that restricts a student's breathing."
Georgia	Ga. Comp. R. & r. 160-5-1-3.5	Defines "physical restraint" to mean, in part, "direct physical contact from an adult that prevents or significantly restricts a student's movement. The term physical restraint does not include prone restraint, mechanical restraint, or chemical restraint." "Prone restraint" is defined to mean "refers to a specific type of restraint in which a student is intentionally placed face down on the floor or another surface, and physical pressure is applied to the student's body to keep the student in the prone position." Prone physical restraints are expressly prohibited in Georgia schools and educational programs. Guidance from the Georgia DOE on the rule provides: "When a student is intentionally placed face down on the floor or another surface, and physical pressure is applied to the student's body to keep the student in the prone position, there is an increased risk of injury to the student. Pressure applied on the back and chest areas can result in the student experiencing respiratory distress. When the staff member applying the restraint is substantially larger than the student, the student may also experience broken bones or other physical injuries. Another danger associated with the use of prone restraints is the limited ability of the staff to monitor the student's physical status."
Iowa	Iowa Admin. Code r. 281-103.8	"(1) No employee shall use any prone restraints. For the purposes of this rule, "prone restraints" means those in which an individual is held face down on the floor. Employees who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint."
Louisiana	La. Rev. Stat. § 17:416.21	"Physical restraint shall be used only ... (c) in a manner that causes no physical injury to the student, results in the least possible discomfort, and does not interfere in any way with a student's breathing or ability to communicate with others (2) no student shall be subjected to any form of mechanical restraint; (3) no student shall be physically restrained in a manner that places excessive pressure on the student's chest or back or that causes asphyxia; (4) A student shall be physically restrained only in a manner that is directly

State	Citation	Language
		proportionate to the circumstances and to the student's size, age, and severity of behavior."
Maine	Code Me. R. Chapter 33, § 5(2) (proposed rule)	Proposed Rule Change to Chapter 33, section 5, would prohibit "C) no physical restraint may be used that restricts the free movement of the diaphragm or chest or that restricts the airway so as to interrupt normal breathing or speech (restraint-related positional asphyxia) of a student; D) no physical restraint may be used that relies on pain for control, including but not limited to joint hypertension, excessive force, unsupported take-down (e.g. tackle), the use of any physical structure (e.g. wall, railing or post), punching and hitting."
Maryland	Md. Regs. Code tit. 13A. § 13A.08.04.05(A)(1) (e)	Provides: "In applying restraint, school personnel may not: (i) Place a student in a face down position; (ii) Place a student in any position that will obstruct a student's airway or otherwise impair a student's ability to breathe, obstruct a staff member's view of a student's face, restrict a student's face, restrict a student's ability to communicate distress, or place pressure on a student's head, neck, or torso; or (iii) straddle a student's torso."
Massachusetts	Mass. Regs. Code, tit. 603, § 46.05(5)(a)	Safety requirements. Additional requirements for the use of physical restraint: "(a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking."
Michigan	Michigan State Bd. of Educ.: Supporting Student Behavior: Standards for the Emergency Use of Seclusion and Restraint	VI. Restraints, E. Prohibited Practices include prone restraint "school personnel who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint." Prone restraint is defined as "the restraint of a person face down."
Minnesota	Minn. Stat. §§ 125A.094 - .0942	Minn. Stat. § 125A.0942, Subd. 4(9) prohibits "physical holding that restricts or impairs a child's ability to breathe."

State	Citation	Language
		Minn. Stat. § 125A.0942, Subd. 3(7) provides “until August 1, 2012, a school district may use prone restraints under the following conditions: (i) a district has provided to the department a list of staff who have had specific training on the use of prone restraints; (ii) a district provides information on the type of training that was provided and by whom; (ii) prone restraints may only be used by staff who have received specific training; (iv) each incident of the use of prone restraints is reported to the department within five working days on a form provided by the department or on a district’s restrictive procedure documentation form; and (v) a district, prior to using prone restraints, must review any known medical or psychological limitations that contraindicate the use of prone restraints.”
Missouri	Missouri Dep’t of Educ. Elementary and Secondary Educ., Model Policy on Seclusion and Restraint, p. 2	Requires all school districts in the state of Mo to develop a policy on the use of seclusion and restraint, as well as other responses to emergency or crisis situations, in which student and/or educator safety is at risk. A school district may adopt a policy prohibiting the use of seclusion, isolation or restraint. However, “Physical restraint shall: not place pressure or weight on the chest, lungs sternum, diaphragm, back, neck or throat of the student which restricts breathing.”
Nebraska	Nebraska Educ. Dept., Developing School Policies & Procedures for Physical Restraint and Seclusion in Nebraska Schools, p.34	“Prone or supine forms of physical restraint are not authorized and should be avoided.”
New Hampshire	N.H. Rev. Stat. Ann. §§ 126-T:1 – 126-T:13	126-T:4 “Prohibition of Dangerous Restraint Techniques. No school or facility shall use or threaten to use any of the following restraint and behavior control techniques: 1) Any physical restraint or containment technique that: a) obstructs a child’s respiratory airway or impairs the child’s breathing or respiratory capacity or restricts the movement

State	Citation	Language
		required for normal breathing; b) places pressure or weight on, or causes the compression of, the chest, lungs, sternum, diaphragm, back, or abdomen of a child; c) obstructs the circulation of blood; d) involves pushing on or into the child's mouth, nose, eyes, or any part of the face or involves covering the face or body with anything, including soft objects such as pillows, blankets, or washcloths; or e) endangers a child's life or significantly exacerbates a child's medical condition."
New Mexico	State of New Mexico Public Educ. Dep't, Use of Physical Restraint as a Behavioral Intervention for Students with Disabilities, Memorandum, p. 4	"No form of physical restraint may be used that restricts a student from speaking or breathing."
Ohio	Ohio Exec. Order No. 2009-13S, p. 2	"The use of prone restraint is prohibited across all state systems. Prone restraint is defined as all items or measures used to limit or control the movement or normal functioning of any portion, or all, of an individual's body while the individual is in a face-down position. Transitional hold is defined as a brief physical positioning of an individual face-down for the purpose of quickly and effectively gaining physical control of that individual in order to prevent harm to self and others, or prior to transport to enable the individual to be transported safely. Transitional hold may include the use of handcuffs and other restraints incident to arrest or temporary detention by law enforcement consistent with departmental policy. The use of transitional hold may be permitted only when all of the following conditions are met and as determined by departmental policy: 1) transitional hold may be applied only by staff with current training on the safe use of this procedure, including how to recognize and respond to signs of distress in the individual; 2) transitional hold may be applied only in a manner that does not compromise breathing, including the compromise that occurs with the use of (1) pressure or weight bearing on the back; (2) soft devices such as pillows under an individual's face or upper body; or (3) the placing of an individual's or staff's arms under the individual's head, face, or upper body; (3) Transitional hold may be applied

State	Citation	Language
		only for the reasonable amount of time necessary to safely bring the person or situation under control and to ensure the safety of the individuals involved; and (4) Transitional hold may be applied only with consistent and frequent monitoring during and after the intervention with every intent to assure that the person is safe and suffers no harm."
Oklahoma	Oklahoma State Dep't of Educ., Guidelines for Minimizing the Use of Physical Restraint for Students with Disabilities in Oklahoma	"Prone restraints (restraints that position a student face down on his or her stomach or face up on the back) or any maneuver that places pressure or weight on the chest, sternum, lungs, diaphragm, neck, throat, or back must not be used. No restraint that prevents a student from speaking or breathing is allowed."
Oregon	2011 Or. Laws Chapter 665, Section 2(1)	"The use of mechanical restraint, chemical restraint or prone restraint on a student in a public education program in this state is prohibited." Oregon Laws, Chapter 665, Section 2(1). "Prone restraint means a restraint in which a student is held face down on the floor." (Section 2(3)(b)(B)(ii)(c)). "'Physical restraint' does not include prone restraint."
Pennsylvania	22 Pa. Code § 14.133(c)(3)	Provides "The use of prone restraints is prohibited in educational programs. Prone restraints are those in which a student or eligible young child is held face down on the floor."
Rhode Island	R.I. Bd. of Regents Physical Restraint Regulations, 6.2(e)	Provides "As in a restrictive intervention which employs a device or material or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment may be used by trained personnel as a limited emergency intervention when a documented part of a previously agreed upon written behavioral intervention plan."
South Carolina	South Carolina Dep't of Educ., Guidelines on the Use of Seclusion and Restraint, p. 8	"Prone restraints (with the student face down on his or her stomach) or supine restraints (with the student face up on the back) or any maneuver that places pressure or weight on the chest, lungs, sternum, diaphragm, back, neck or throat are prohibited."

State	Citation	Language
Tennessee	Tenn. Code Ann. § 49-10-1301(5)(d)	“Any form of life threatening restraint, including restraint that restricts the flow of air into a person’s lungs, whether by chest compression or any other means, to a student receiving special education services ... is prohibited.”
Vermont	Vt. Code R. 4500 <i>et seq.</i>	4500.3(9) defines prone physical restraint “means holding a student face down on his or her stomach using physical force for the purpose of controlling the student’s movement.” 4502.1.1 provides “prone and supine physical restraints are more restrictive than other forms of physical restraint and may be used only when the student’s size and severity of behavior require such a restraint because a less restrictive restraint has failed or would be ineffective to prevent harm to the student or others.” 4501.1(c) prohibits school personnel and contract service providers from imposing on a student “any physical restraint, escort, or seclusion that restricts or limits breathing or communication, causes pain or is imposed without maintaining direct visual contact.”
Washington	Wash. Admin. Code § 392-172A-03125(3)(a)(iv)	Prohibits “the use of restraint which interferes with a student’s breathing.”
West Virginia	W. Va. Code § 126.28-8.14	“Handling Behavior Problems. Staff members and other adults in a WV Pre-k classroom shall not handle behavior problems by: ... 8.14.3. Restraining a child by any means other than a firm grasp around a child’s arms or legs and then for only as long as is necessary for the child to regain control.”
Wisconsin	Wisconsin Dep’t of Public Instruction, WDPI Directives for the Appropriate Use of Seclusion and Physical Restraint in Special Education Programs, p. 2	WDPI Directives provides “Prohibited practices include prone restraints as well as other techniques.”
Wyoming	Wyoming Educ. R. Chapter 42	Section 6(h)(iv) defines “prone restraints include holding a student in a face down position or in any position that will A) Obstruct a student’s airway or otherwise impair the ability to breathe; B) Obstruct a staff member’s view of a student’s face; C) Restrict a student’s ability to communicate



State	Citation	Language
		distress; D) Place pressure on a student's head, neck, or torso; or E) Straddle a student's torso." Section 7(b)(i)(B) provides: "Schools shall not utilize aversive interventions, mechanical restraints, or prone restraints at any time."

## ATTACHMENT B-3

Recently Enacted Language Relating to Prone Restraint or Restraint that Restricts a Child's Ability to Breathe in Non-School Settings

State	Citation	Language
Maryland	Maryland. Regs. Code title 14 § 14.31.06.00 <i>et seq.</i>	Rule 14.31.06.03(18) defines “prone restraint” to mean “being face down.” Rule 14.31.06.15(E)(1)(a) provides “the use of prone floor restraint is prohibited in residential child care facilities.”
Minnesota	Minnesota METO Settlement, Case 0:09-cv-01775-DWF-FLN, Doc. 104-1, Attachment A	<p>Defines “prone restraint” as “means any restraint that places the individual in a face-down position. Prone restraint does not include brief physical holding of an individual who, during an incident of physical restraint, rolls into a prone or supine position, when staff restore the individual to a standing, sitting, or side-lying position as soon as possible.”</p> <p>“Prone restraint is prohibited because positional asphyxiation is a risk factor. The prone restraint (face down) position will only be used at METO as a transitory take down portion of a manual restraint procedure. The client should be rolled into a side-lying position or seated position as quickly as is possible. In addition, it is considered a transitory prone facing portion of a restraint if during a brief physical holding of an individual he or she rolls into a prone facing position, when staff restore the individual to a standing, sitting, or side-lying position as soon as possible. Applying back pressure while a client is in the prone position is prohibited.”</p>
Ohio	Ohio Admin. Code § 5122-26-16	<p>Prohibits: “a) face down restraint with back pressure; b) any technique that obstructs the airways or impairs breathing; c) any technique that obstructs vision; d) any technique that restricts the recipient’s ability to communicate....” 5122-26-16(C)(8) defines “prone restraint” to mean “all items or measures used to limit or control the movement or normal functioning of any portion, or all, of an individual’s body while the individual is in a face-down position for an extended period of time. Prone restraint may include either physical (also known as manual) or mechanical restraint.” 5122-26-16(C)(13) defines “Transitional hold” to mean “a brief physical (also known as manual) restraint of an individual face-down for the purpose of quickly and effectively gaining physical control of that individual, or prior to transport to enable the individual to be transported</p>

State	Citation	Language
		<p>safely.”</p> <p>Chapter 5122-26-12(D)(3) provides “Position in physical or mechanical restraint. (a) An individual shall be placed in a position that allows airway access and does not compromise respiration. (i) The use of prone restraint is prohibited. (ii) A transitional hold shall be limited to the minimum amount of time necessary to safely bring the person under control, at which time staff shall either terminate the transitional hold, and begin the post-restraint process required by this rule, or, if the individual cannot safely be released from the transitional hold, re-position the individual into an alternate restraint position. (b) The use of transitional hold shall be subject to the following requirements: (i) Applied only by staff who have current training on the safe use of transitional hold techniques, including who to recognize and respond to signs of distress in the individual; (ii) the weight of the staff shall be placed to the side, rather than on top of the individual. No transitional hold shall allow staff to straddle or bear weight on the individual’s torso while applying the restraint, i.e., no downward pressure may be applied that may compromise the individual’s ability to breathe. (iii) No transitional hold shall allow the individual’s hands or arms to be under or behind his/her head or body. The arms must be at the individual’s side. (iv) No soft device, such as a pillow, blanket or other item, shall be used to cushion the client’s head, since such a device may restrict the individual’s ability to breathe. (v) All staff involved in the procedure must constantly observe the individual’s respiration, coloring, and other signs of distress, listen for the individual’s complaints of breathing problems, and immediately respond to assure safety.”</p>
Rhode Island	Rhode Island Dep’t of Children, Youth and Families, Residential Care Regulations for Licensure	<p>Applicable to residential child care, 42-72.9-3(e) defines “life threatening physical restraint” as “any restraint or hold on a child that restricts the flow of air into a person’s lungs, whether by chest compression or any other means.”</p> <p>42-72.9-4 (a) “no service provider may use life threatening physical restraint on any child at any time.”</p>
Texas	Tex. Health & Safety Code § 592.102	<p>“The executive commissioner shall adopt rules to prohibit the use of prone and supine holds on a resident of a state supported living center except as transitional holds.”</p>

# Attachment C



## Minnesota Department of Education PBIS Initiative: 2004-2011

In 2004, the Minnesota Department of Education (MDE) established a partnership with Dr. George Sugai, Co-Director of the National Technical Assistance Center for Positive Behavioral Interventions and Supports (PBIS). Dr. Sugai has consulted with MDE to establish a State Leadership Team and to develop a state action plan based on the National PBIS Blueprint to support schools and programs that demonstrate readiness to implement School-wide Positive Behavioral Interventions and Supports (SW-PBIS). The State Leadership Team guides and coordinates PBIS efforts across Minnesota. The team represents educators, families, administrators, trainers, coaches and evaluators to support the successful implementation of PBIS in our state. The leadership team is responsible for reviewing applications for annual training, and for selecting school teams that have engaged in exploratory and preparation activities which have generated staff buy-in.

The first SW-PBIS training in Minnesota was offered in 2005. This inaugural two year training included a cohort of nine schools from three independent school districts. This initial cohort included elementary, middle and high schools. Since then, the growth of schools participating in training and continued implementation has been exponential, including urban, suburban, rural, pre-K through 12 schools and programs. Cohort 8 teams have just applied and those teams accepted will begin training in August 2012.

As of September, 2011, over 300 Minnesota schools were either in training or had completed the two-year scope and sequence. The next steps for PBIS Minnesota will be the development of a state-wide recognition system and supporting these schools on the journey towards sustained implementation.

Our work represents the energy, collaboration and learning from a broad constituency of Minnesota PBIS trainers, coaches, practitioners, stakeholders, educators, advocates,

## Attachment C

researchers, volunteers, administrators, regional project and MDE staff. We look towards continued partnerships to expand depth and breadth of PBIS MN and to continuously improve how SW-PBIS evolves in our state to create safe and positive learning communities. We are grateful for the groundbreaking efforts of our colleagues from other states (even countries!) and their willingness to share their wisdom and materials in the collaborative “open-source” spirit typical of the PBIS community. We look forward to contributing to this outstanding community, welcoming new teams and supporting existing teams!

# Attachment C

Regional Implementation Project Coordinators:

**North:** Regions 1 & 2, 3, 4, 5 and 7

Barbara Lindell

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**Metro:** Region 11 (partnership of Metro ECSU & MACMH)

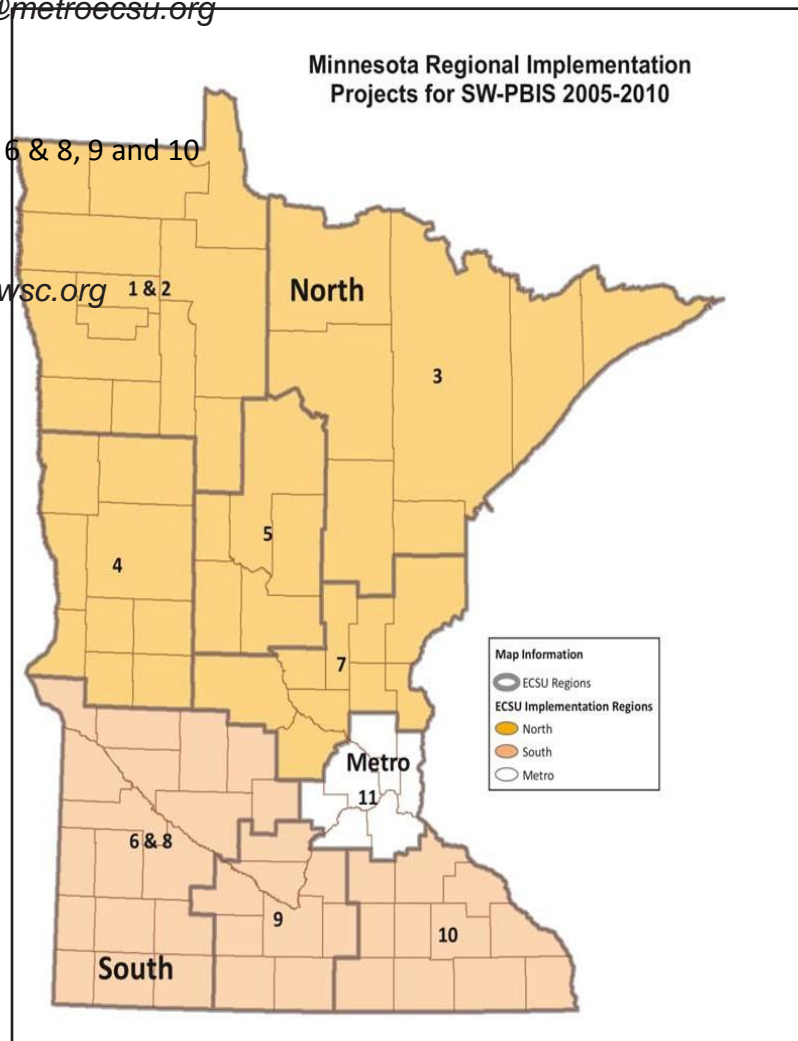
Ingrid Aasan

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**South:** Regions 6 & 8, 9 and 10

Bob Braun

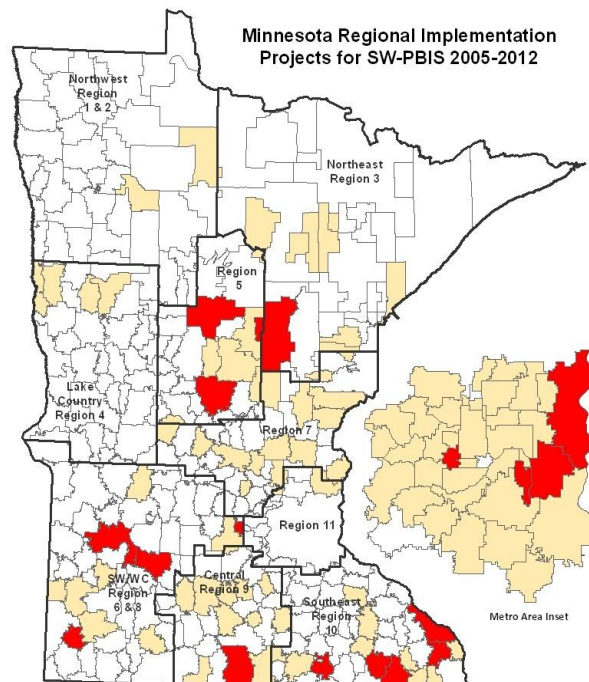
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## Attachment C



For additional information on School-wide Positive Behavioral Interventions and Supports



# Attachment C

## Key:

Areas shaded tan had one or more schools implementing PBIS at the start of the 2011-12 school year. Areas shaded red are districts with their first school entering training in the 2011-12 school year.

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